

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re:	Application No. 10/806,713)	<i>Confirmation No. 2662</i>
)	
Filed:	March 23, 2004)	
)	
Applicants:	Yuko Nashikawa et al.)	
)	This Appeal Brief was electronically filed
Title:	3-DIMENSIONAL BROWSING AND)	on July 17, 2009 using EFS-Web.
	SELECTION APPARATUS AND)	
	METHOD)	
)	
Art Unit:	2426)	
)	
Examiner:	Joshua D. Taylor)	
)	
)	
Attorney Docket:	7114/81231)	
)	
Customer No.:	22242)	

Mail Stop APPEAL BRIEF -- PATENTS
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

APPEAL BRIEF

Sir:

Pursuant to 37 C.F.R. § 41.37, the Applicants hereby respectfully submit the following Brief in support of their appeal.

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

TABLE OF CONTENTS

(1)	Real Party in Interest	3
(2)	Related Appeals and Interferences	3
(3)	Status of Claims	3
(4)	Status of Amendments	3
(5)	Summary of Claimed Subject Matter	3
(6)	Grounds of Rejection to Be Reviewed on Appeal	5
(7)	Argument	6
(8)	Claims Appendix	13
(9)	Evidence Appendix	16
(10)	Related Proceedings Appendix	17

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

(1) Real Party in Interest

The real parties in interest are Sony Corporation, a Japanese corporation, with offices in Tokyo, Japan, and Sony Electronics Inc., a Delaware corporation having a primary place of business in Park Ridge, New Jersey, both of which are assignees of the present application.

(2) Related Appeals and Interferences

There are no related appeals or interferences known to appellant, the appellant's legal representative, or assignee that will directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

Claims 1-13 are pending and presently stand twice and finally rejected and constitute the subject matter of this appeal.

(4) Status of Amendments

No post-final amendments have been submitted.

(5) Summary of Claimed Subject Matter

A concise explanation of this subject matter appears as follows in the form of claim subject matter maps (with corresponding references to the specification by page and line number (or paragraph numbering where appropriate) and to the drawing(s) (if any) by figure number and reference characters where applicable.¹

¹ There are no means plus function (or step plus function) recitations in any of the claims involved in this appeal, and therefore there is no identification of any corresponding structure, material, or acts in the specification in this regard. It will be understood that this summarization of the claimed subject matter is, in fact, a "summary" and that the Applicants do not represent or intend that this brief presentation, or the accompanying references to the drawings and the specification, comprise an exhaustive presentation in this regard. As always, the claims are to be viewed and interpreted in view of the context of the entire specification sans the Abstract.

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

Independent Claim 1

	Specification Paragraphs/ Figure Numbers
A method comprising: - providing access (21) to a plurality of characterizing descriptors for each of a plurality of discrete selectable items of audio/video content;	FIG. 1, FIG. 2 0020, 0029, 0032
- providing a program guide (22) by simultaneously displaying a plurality of the characterizing descriptors for each of a plurality of the discrete selectable items using a browsing and selection interface that bears at least some of the characterizing descriptors and wherein three spatial dimensions for the browsing and selection interface are simultaneously displayed, such that the browsing and selection interface is depicted as a plurality of three dimensional objects, wherein each of the plurality of three dimensional objects corresponds to a different time and displays a plurality of characterizing descriptors corresponding to that time;	FIG. 2, FIG. 3, FIG. 4, FIG. 5 0020, 0022, 0030-0033
- responding to user input (23) by scrolling a display (24) of the plurality of the characterizing descriptors for each of a plurality of the discrete selectable items wherein the characterizing descriptors displayed on each of the plurality of three dimensional objects may be scrolled independently of the characterizing descriptors displayed on the other three dimensional objects.	FIG. 2, FIG. 3 0020-0021, 0028, 0034-0039

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

Independent Claim 9

	Specification Pages/Line Numbers Figure Number/ Reference Character
An interactive program guide system comprising: - characterizing descriptors (22) for each of a plurality of discrete selectable items of audio/video content;	FIG. 1, FIG. 2 0020, 0029, 0032
- control circuitry (11) that displays (14) a plurality of the characterizing descriptors using a browsing and selection interface (17) that bears at least some of the characterizing descriptors and wherein three spatial dimensions for the browsing and selection interface are simultaneously displayed, such that the browsing and selection interface is depicted as a plurality of three dimensional objects (31, 32, 33, 34), wherein each of the plurality of three dimensional objects corresponds to a different time and displays a plurality of characterizing descriptors corresponding to that time; and	FIG. 1, FIG. 2, FIG. 3, FIG. 4, FIG. 5 0020, 0022, 0024-0026 0030-0033,
- wherein the control circuitry (11) is operably responsive to user input (16) to scroll the display of the plurality of the characterizing descriptors, and wherein the characterizing descriptors displayed on each of the plurality of three dimensional objects may be scrolled independently of the characterizing descriptors displayed on the other three dimensional objects.	FIG. 1, FIG. 2, FIG. 3 0020-0021, 0028, 0034-0039

(6) Grounds of Rejection to be Reviewed on Appeal

Claims 1-7 and 9-12 are rejected under 35 U.S.C. § 103(a) given Nakamura et al. (U.S. Patent Publication No. 2003/0167466) (“Nakamura”) in view of Florin (U.S. Patent No.

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

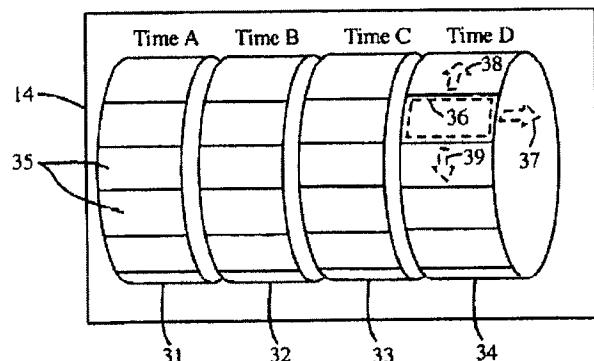
5,583,560) (“Florin”) and further in view of Nikolovska (U.S. Patent No. 6,505,194) (“Nikolovska”). Claims 8 and 13 were rejected under 35 U.S.C. § 103(a) given Nakamura in view of Florin and Nikolovska and further in view of Sai (U.S. Patent No. 6,922,661) (“Sai”). The Applicants dispute these rejections.

(7) Argument

Rejections under 35 U.S.C. § 103(a)

Claims 1-7 and 9-12 were rejected under 35 U.S.C. § 103(a) given Nakamura in view of Florin and further in view of Nikolovska

The applicants’ claims specify providing a program guide with a browsing and selection interface depicted as a plurality of three dimensional objects, each of which corresponds to a different time and each of which displays a plurality of characterizing descriptors (for example, program descriptions) corresponding to that time. An embodiment of applicants’ program guide is shown in applicants’ FIG. 3 (reproduced at the right) in which the applicants provide for a plurality of three dimensional cylinders where the horizontal axis corresponds to the temporal domain and where each of the cylinders corresponds to a different time. The user may browse and select among the



characterizing descriptors by scrolling each of the three dimensional objects independently of the other three dimensional objects.

The Board should completely reverse these rejections under 35 U.S.C. § 103(a) because Nakamura, in combination with Florin and Nikolovska, fails to disclose displaying characterizing descriptors on a plurality of three dimensional objects, where each object corresponds to a different time, and where each three dimensional object may be scrolled independently of the other three dimensional objects.

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

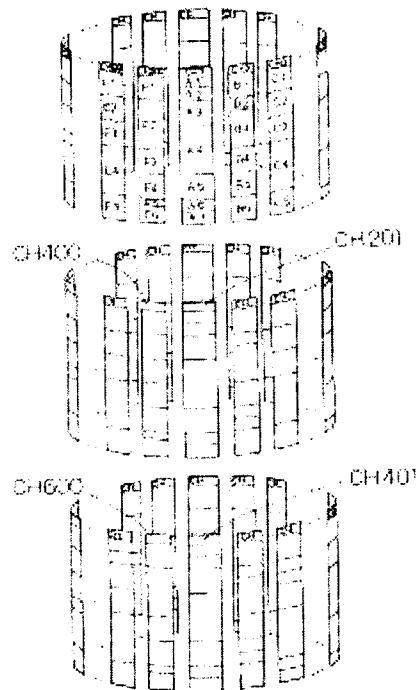
Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

In support of the rejection, the Examiner suggests modifications to Nakamura, which, with all due respect, are extreme and hardly obvious. Moreover, Nikolovska, which the Examiner states discloses independent scrolling, actually motivates one away from displaying a program guide as three-dimensional objects. No fair combination of Nakamura, Florin, and Nikolovska that does not rely upon the hindsight application of applicants' own teachings will yield the recitations of applicants' claims. The reasons the Board should reverse the final rejection are explained in more detail below.

Independent claims 1 and 9

In making this rejection, the Examiner relies upon Nakamura's presentation of a 3-dimensional cylindrical display and more particularly upon Nakamura disclosing "multiple 3-dimensional cylindrical displays displaying program guide information."² While Nakamura does disclose (in his FIG. 15, shown at the right) a multiple-cylinder embodiment, it is noted that each cylinder presents, for each of a plurality of channels, programming content information for a plurality of different times.

As acknowledged by the Examiner, this is different from the applicants' claimed approach. For example, claims 1 and 9 specify that "each of the plurality of three dimensional objects corresponds to a different time and displays a plurality of characterizing descriptors corresponding to that time."



² Office Communication of April 24, 2009 at page 4.

Application No. 10/806,713

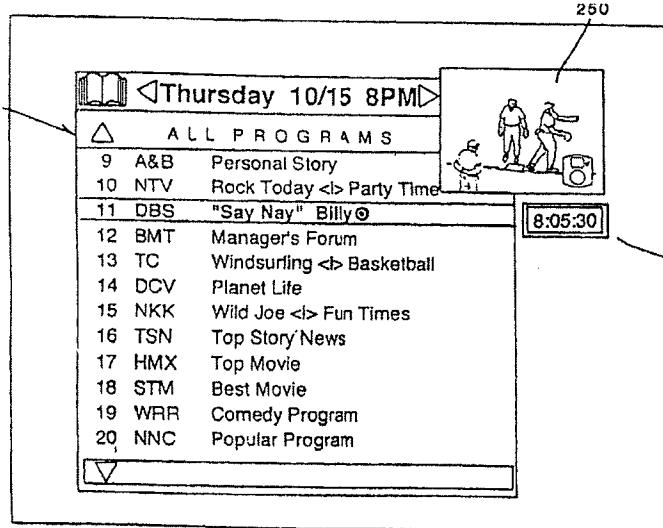
APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

To meet this deficiency in Nakamura, the Examiner then relies upon Florin.

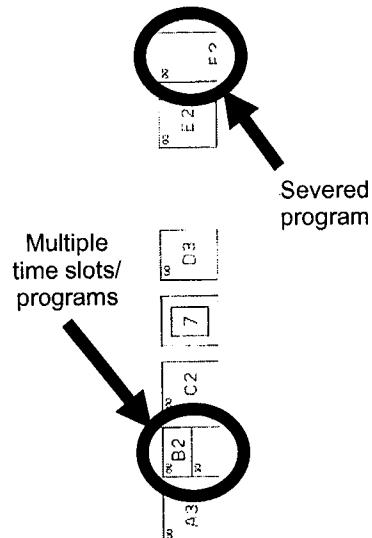
Referring specifically to Florin's FIG. 12 (shown in part at the right), the Examiner notes that Florin "discloses a program guide that can be configured so as to display only programs from a specific time period."³

With this as a presumed point of inspiration, the Examiner then suggests that it would be "an obvious matter of design choice" to "turn the plurality



of [Nakamura's] vertical cylinders . . . on their side . . . [and] one would have a plurality of horizontal cylinders, and there would be a plurality of different times represented."⁴ The Examiner then suggests that the channel columns of Nakamura can be broken up into different time segments to yield a "cylinder denoting a time period."⁵

With all due respect, the applicants observe and submit that making such extreme modifications of Nakamura, with or without the influence of Florin, is hardly obvious and is certainly not a mere design choice. Note, for example, that one does not achieve a usable result by merely making the modifications noted by the Examiner. In the modified view of Nakamura's FIG. 2 shown at the right to accord with such a change, one



³ Office Communication dated April 24, 2009 at page 3.

⁴ Id.

⁵ Id.

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

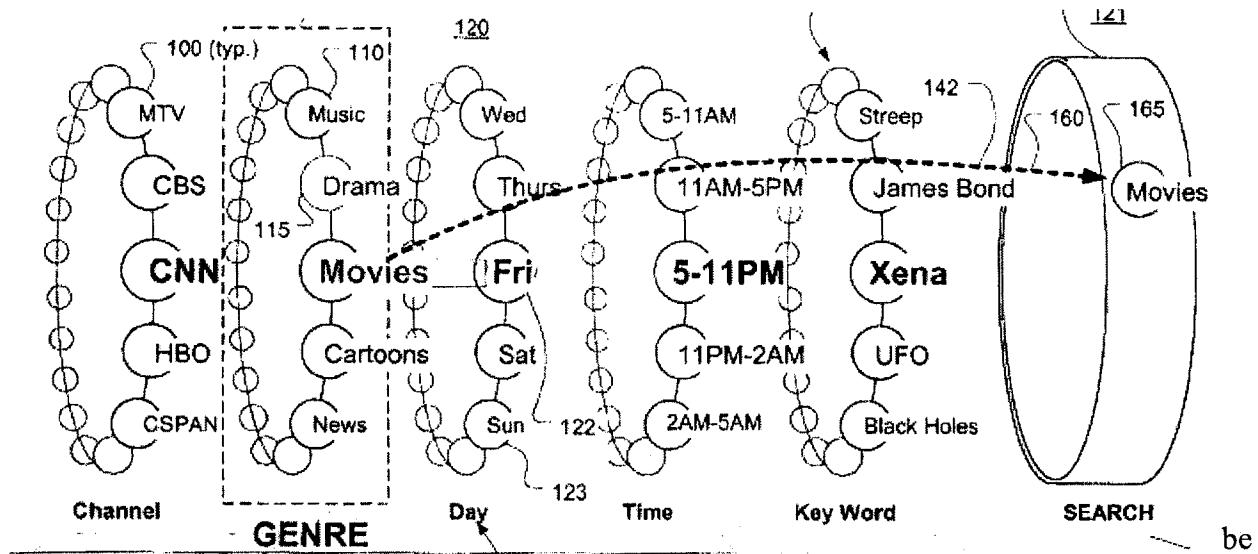
Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

immediately discovers corresponding resulting problems. For example, while some of the programs fit within the one time being displayed, a longer program at the top is severed and another channel hosts one complete program and the beginning of another program. There is nothing in either Nakamura or Florin regarding how one might handle such problems and their corresponding ambiguity. As a result, it is clearly inappropriate to view such a significant alteration of Nakamura as being only a choice of otherwise equivalent designs.

Moreover, Florin, as acknowledged by the Examiner, teaches providing on a display *only* the programming information that corresponds to a given time. The applicants' claims, however, require displaying programming information for a *plurality* of times (albeit on different 3-dimensional objects). Since a fair combination of Florin's requirement that only a single time be presented on the display with Nakamura's cylinder will yield a display that only provides programming information for a *single* time, a combination of Florin with Nakamura cannot be fairly said to anticipate the applicants' claimed requirements in this regard.

The applicants' claims also provide for being able to independently scroll through the information on a single 3-dimensional object, hence leaving the other 3-dimensional objects as they were. The Examiner suggests that Nikolovska can be used to supplant this claimed recitation with particular reliance being based upon Nikolovska's FIGS. 4-9.

Nikolovska's FIG. 4 is reproduced below for the convenience of the reader and can be seen to be comprised of a series of what Nikolovska refers to as "beads." It is each grouping of these beads that the Examiner is relying upon as comprising independently scrollable 3-dimensional displays.



The applicants note, however, that the figures from Nikolovska do not constitute a display of selectable content (even though Nikolovska is, in fact, directed to a programming guide). Instead, these beads are used as a mechanism to frame a query that is then posed to a database. Using these beads, the user selects a particular search criterion in each of a plurality of search categories (such as channel, genre, day, time, and so forth) to formulate their search. In this setting, it constitutes common sense to permit the user to independently manipulate each collection of beads as this accords with how one ordinarily builds a search query – one criterion at a time. To put this differently, this display paradigm is proposed for use in a setting where the user is seeking to learn what *might* be available and not for displaying what is, *in fact*, available.

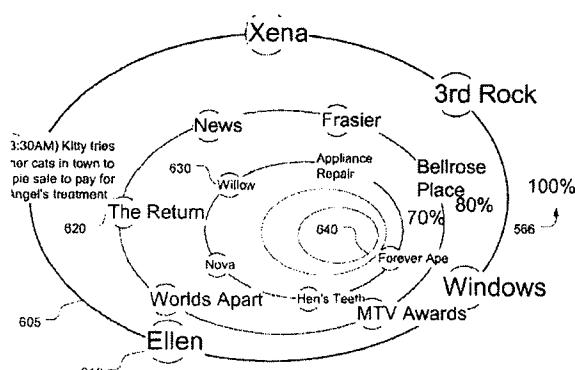
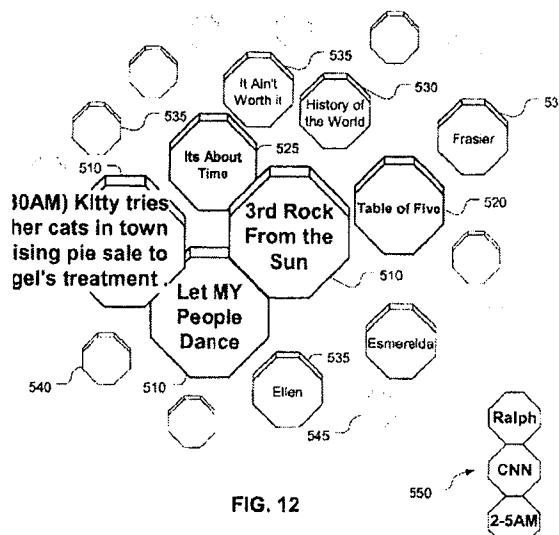
When it comes time to display the *results* of such a search, Nikolovska advocates a considerably different approach. As shown in his FIGS. 12 and 14 below⁶, Nikolovska's

⁶ Note – only portions of these figures are shown here.

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009



Resultant programming guide displays are completely different from his search-query-formulation displays and are also completely different from anything that the applicants have disclosed or seek to claim.

Taking Nikolovska in whole and in context, this reference teaches using one kind of display approach for formulating a search query and a completely different approach for displaying the results of that search. An electronic programming guide of the kind being claimed by the applicants is far more akin to the latter than the former. The applicants respectfully observe that Nikolovska's teachings would actually motivate a person skilled in the art *away* from independently scrollable 3-dimensional objects when displaying available programming results, as Nikolovska eschews such an approach even though he was obviously keenly aware of such a display paradigm since he adopted something similar in his query-formulation display.

Accordingly, and with all due respect, the applicants submit that no combination of these three references, and certainly no fair combination that does not rely upon the hindsight application of the applicants' own teachings, will yield the recitations of independent claims 1 and 9. Accordingly, the applicants submit that claims 1 and 9 are allowable over the references of record.

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

Dependent claims 2-7 and 10-12

These claims are ultimately dependent upon one of the independent claims shown above to be allowable. While the applicants believe that other arguments are available to highlight the allowable subject matter presented in various ones of these dependent claims, the applicants also believe that the comments set forth herein regarding allowability of the independent claims are sufficiently compelling to warrant present exclusion of such additional points for the sake of brevity and expedited consideration.

Dependent claims 8 and 13 were rejected under 35 U.S.C. § 103(a) given Nakamura, Florin and Nikolovska, and further in view of Sai.

Claims 8 and 13

These claims are ultimately dependent upon one of the independent claims shown above to be allowable. While the applicants believe that other arguments are available to highlight the allowable subject matter presented in various ones of these dependent claims, the applicants also believe that the comments set forth herein regarding allowability of the independent claims are sufficiently compelling to warrant present exclusion of such additional points for the sake of brevity and expedited consideration.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

Dated: July 17, 2009

/Joseph M. Marinelli/

Joseph M. Marinelli

Registration No. 46898

120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406
Telephone (312) 577-7000
Facsimile (312) 577-7007

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

(8) Claims Appendix

1. A method comprising:

- providing access to a plurality of characterizing descriptors for each of a plurality of discrete selectable items of audio/video content;
- providing a program guide by simultaneously displaying a plurality of the characterizing descriptors for each of a plurality of the discrete selectable items using a browsing and selection interface that bears at least some of the characterizing descriptors and wherein three spatial dimensions for the browsing and selection interface are simultaneously displayed, such that the browsing and selection interface is depicted as a plurality of three dimensional objects, wherein each of the plurality of three dimensional objects corresponds to a different time and displays a plurality of characterizing descriptors corresponding to that time;
- responding to user input by scrolling a display of the plurality of the characterizing descriptors for each of a plurality of the discrete selectable items wherein the characterizing descriptors displayed on each of the plurality of three dimensional objects may be scrolled independently of the characterizing descriptors displayed on the other three dimensional objects.

2. The method of claim 1 wherein each of the plurality of three dimensional objects corresponds to a three dimensional cylinder.

3. The method of claim 1 wherein the plurality of discrete selectable items of audio/video content are embodied in a plurality of media.

4. The method of claim 1 and further comprising:

- responding to a remote control device by scrolling the display of the plurality of the characterizing descriptors for each of a plurality of the discrete selectable items.

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

5. The method of claim 4 and further comprising:

- responding to a remote control device by altering the display of the plurality of the characterizing descriptors for each of a plurality of the discrete selectable items on a page basis.

6. The method of claim 1 and further comprising:

- responding to a remote control device by signaling user selection of a particular one of the discrete selectable items of audio/video content.

7. The method of claim 6 and further comprising:

- sending a signal indicating user selection of the particular one of the plurality of discrete selectable items of audio/video content.

8. The method of claim 1 and further comprising:

- using a jog dial to do at least one of:
- scrolling a display of the plurality of the characterizing descriptors for each of a plurality of the discrete selectable items;
- paging a display of the plurality of the characterizing descriptors for each of a plurality of the discrete selectable items

9. An interactive program guide system comprising:

- characterizing descriptors for each of a plurality of discrete selectable items of audio/video content;
- control circuitry that displays a plurality of the characterizing descriptors using a browsing and selection interface that bears at least some of the characterizing descriptors and wherein three spatial dimensions for the browsing and selection interface are simultaneously displayed, such that the browsing and selection interface is depicted as a plurality of three dimensional objects, wherein each of the plurality of three dimensional objects corresponds to a different time and displays a plurality of characterizing descriptors corresponding to that time; and

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

- wherein the control circuitry is operably responsive to user input to scroll the display of the plurality of the characterizing descriptors, and wherein the characterizing descriptors displayed on each of the plurality of three dimensional objects may be scrolled independently of the characterizing descriptors displayed on the other three dimensional objects.

10. The interactive program guide system of claim 9 wherein each of the plurality of three dimensional objects corresponds to a three dimensional cylinder.

11. The interactive program guide system of claim 9 wherein the plurality of discrete selectable items of audio/video content are embodied in a plurality of media.

12. The interactive program guide of claim 9 and further comprising:

- a remote control device; and

wherein the control circuitry is operably responsive to the remote control device.

13. The interactive program guide system of claim 9 and further comprising:

- a jog dial; and

wherein the control circuitry is operably responsive to the jog dial.

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

(9) Evidence Appendix

None

Application No. 10/806,713

APPEAL BRIEF dated July 17, 2009

Final Rejection dated April 24, 2009; Notice of Appeal dated July 12, 2009

(10) **Related Proceedings Appendix**

None